

The Gazette of India



EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

No. 202] NEW DELHI, TUESDAY, SEPTEMBER 30, 1958/ASVINA 8, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi-2 the 23rd September 1958/Asvina 1, 1880 (Saka)

S.O. 2050.—Whereas the election of Shri Kashi Nath Pandey as a member of the House of the People from the Hata Constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Kapildeo, son of Banshi Pandey, resident of village Deoria, Tappa Dandopur, Pargana Sidhua Jobna, Tehsil and Post Office Padrauna, District Deoria.

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has in exercise of the powers conferred on it by section 109 of the said Act granted leave to the petitioner to withdraw the said petition;

And whereas the said Tribunal in pursuance of the provisions of clause (c) of sub-section (3) of section 110 of the said Act, allowed Shri Shibban Lal Saxena, Main Bazar, Gorakhpur as petitioner in place of the original petitioner;

And whereas the said Tribunal has, in pursuance of the provisions of section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF ELECTION TRIBUNAL, GORAKHPUR AT SITAPUR.

PRESENT:—Sri M. S. Saxena.

ELECTION PETITION No. 463 of 1957.

Sri Shibban Lal Saxena—Petitioner.

Versus

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| <ol style="list-style-type: none"> 1. Sri Kashi Nath Pandey. 2. Sri Genda Singh. 3. Sri Rajendra Kishore Sahl. 4. Sri Madan Pal Singh. | } | Respondents. |
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JUDGMENT

This is an election petition which was originally filed by Sri Kapildeo for declaring void the election of Sri Kashi Nath Pandey, Respondent No. 1, to the House of People from the Hata Parliamentary Constituency comprising of the four State Legislative Assembly Constituencies, namely, (1) Padrauna North Single member constituency in Deoria District, (2) Sidhuwajobna double member constituency in Deoria District, (3) Hata single member constituency in Deoria

District and (4) Tilpur single member constituency in Gorakhpur District and for disqualifying him for being guilty of corrupt practices for such period as the Tribunal may think fit.

Sri Kashi Nath Pandey Respondent No. 1 from the Congress Party, Sri Genda Singh Respondent No. 2, Sri Rajendra Kishore Sahi Respondent No. 3, Sri Madan Pal Singh Respondent No. 4 and Sri Shibban Lal Saxena from the Kisan Mazdoor Praja Party who was also Respondent No. 5, and had now been substituted as petitioner in place of Sri Kapildeo who withdrew from the petition, were the contesting candidates from this Constituency in the last General Elections held in February and March 1957. The polling had taken place on three different dates, namely on 28th February 1957 in the Padrauna North Assembly Constituency, on 3rd March 1957 in the Sidhuwajobna and Hata Assembly Constituencies and on 9th March 1957 in Tilpur Assembly Constituency. The result of the election was declared on 22nd March 1957 and Sri Kashi Nath Pandey was declared the duly elected member of the House of People from this Parliamentary Constituency. The election of Sri Kashi Nath Pandey has been challenged on various grounds of corrupt practices by him and his agents and on the ground of various other illegal and improper practices by them which materially affected the result of the election. It is not necessary to go into them here as they and the replies of Sri Kashi Nath Pandey the only contesting respondent to them would be dealt with in detail in discussing the various issues framed in the case.

During the pendency of the case Sri Kapildeo withdrew from the election petition and Sri Shibban Lal Saxena, who was respondent No. 5, was substituted in his place as petitioner under section 110(3) (c) of the Representation of the People Act.

The following issues were framed:—

ISSUES

1. Whether Sri Kashi Nath Pandey and the Assembly Congress candidates were canvassing jointly and if Sri Kashi Nath Pandey was responsible for their acts?
2. Whether the voters of Chitauri had been paid Rs. 3/- each on 24th February 1957 to influence them to vote for Sri Kashi Nath Pandey?
3. Whether Sri Kashi Nath Pandey and the allied Assembly Congress candidates had paid money as bribe to Thakur Lonia and Naipal Mahto and a cycle to Sita Ram Rai of Khadda for canvassing and securing votes for them? Whether they gave Balkunth Nath a cycle and a Radio set and Sita Ram Hajjam, Dhondha and Raj Nath Sharma a cycle each? If so, its effect?
4. Whether Brij Bahadur Pandey, brother of Sri Kashi Nath Pandey, paid Rs. 22/- to Mohar Mehtar, and whether Sri Bhagat Sahi labour leader, supporter and polling agent of Sri Kashi Nath Pandey bribed Ganga Hajjam to vote for Sri Kashi Nath Pandey? If so, its effect?
5. Whether Sri Suraj Bali Pandey was canvassing for himself and for Sri Kashi Nath Pandey and whether the Tahsildar had distributed the subsidy mentioned in Schedule II-A under his personal supervision? If so, did it have the effect of inducing the voters of the various village to become active supporters of the Congress?
6. Whether the fourteen Sarpanches mentioned in Schedule II-B had threatened the villagers in their circle that if they did not vote for Sri Kashi Nath Pandey and his party candidates, they would be harassed by being involved in false cases which would be decided against them?
7. Whether Ram Kant, Kapildeo Singh and Raghuraj Dharikar had threatened the voters named in Schedule II-B that if they did not vote for Sri Kashi Nath Pandey, their lives would be miserable? If so, its effect? Was Raghuraj Dharikar the polling agent of Sri Kashi Nath Pandey?
8. Whether the allegations made in Schedule III of the petition are correct and whether Sri Kashi Nath Pandey or Sri Rajdeo Upadhya or Sri Sheo Prasad had been in any way responsible for or instrumental in bringing about the situation mentioned therein? If so, does their action amount to corrupt practice or did it materially influence the result of the election?
9. Whether Sri Kashi Nath Pandey, Sri Rajdeo Upadhya, one of the Assembly Congress candidates, Bhagwat Sahi and Gopal Kashyap had attacked the

personal character and conduct of Sri Shibban Lal Saxena, the petitioner, and Sri Madan Pal Singh, Respondent No. 4, as detailed in Schedule VI of the petition? If so, its effect?

10. Whether the Return of Election Expenses filed by Sri Kashi Nath Pandey was incorrect as explained in Schedule VII? Whether the expenses incurred by Sri Kashi Nath Pandey amounted to more than the prescribed limit? If so, its effect?

11. Whether Sri Kashi Nath Pandey had threatened the Muslim voters named in Schedule X that if they did not vote for him, they would have to go to Pakistan as things would be made too hot for them?

12. Whether Sri Kashi Nath Pandey and his allied Assembly Congress candidates had cajoled and threatened the persons named in paragraph 24 and Schedule XIV of the petition and had they cut and destroyed the crops of Janki Saran and had involved Abhiraj in false cases?

13. Whether Ram Prasad Mall, Jamuna Tewari Sarpanch Dukharan Singh, Lakhan Singh, Ram Bali Pandey and Addya Pandey had threatened the voters as detailed in Schedule II-B of the petition and the amended Schedule II-B. (No issue is framed about the Sabhapati of Tikua-Tar as there is no such allegation anywhere)?

14. Whether Sri Kapildeo Pandey had been confined as and for the reasons given in paragraph 20 of the petition?

FINDINGS

Issue No. 1.—The petitioner's case was that Sri Kashi Nath Pandey and the other Congress candidates for the Assembly Constituencies had been doing their canvassing jointly and as such any corrupt or illegal practice by any of those Congress Assembly candidates affected the election of Sri Kashi Nath Pandey also and he was bound by them. Sri Kashi Nath Pandey contended that he had nothing to do with the canvassing of the assembly candidates. This issue, however, does not arise since the evidence of such practices has been given against Sri Kashi Nath Pandey only and not against the others.

Issue No. 2.—The allegations in respect of this issue are given in paragraph 8 and Schedule I-B. He also filed further particulars about them (*vide* his application 72 Ka).

It is said that on 24th February 1957 at about noon each voter of village Chhitauni near Kopey Jungle (this Chhitauni is to be distinguished from the other Chhitauni in which the Laxmi Devi Sugar Mill is situated) was paid Rs. 3/- by Sri Kashi Nath Pandey through Sri Rajdeo Upadhyaya *alias* Bharthi Ji R.W. 2 as a bribe to vote for him and for the allied Congress candidates for the U.P. Assembly. It was also said in the Schedule that a sum of Rs. 10/- with a blanket and some clothes was given to each of the 13 men named therein ten days before the "election date" to secure their votes for them. The second allegation meant that this payment and gift had also been made through the same agency by Sri Kashi Nath Pandey. No place was given where these things had been given, but the presumption in case of Chhitauni voters would be that they had been given this amount in Chhitauni and in the case of the 13 persons in the latter allegation who belonged to different villages the presumption would be that the money and the blanket etc. had been given to each of them in his own village. The present petitioner in his particulars, therefore, clarified that the Chhitauni voters had been paid Rs. 3/- each at noon on 24th February 1957 in Chhitauni. These particulars were accepted. Regarding the others he said in these particulars that this amount of Rs. 10/- and a blanket had been given to 12 persons named by him therein by Sri Kashi Nath Pandey himself in village Ramkola in a gathering of the workers but without giving the date on which they had been given. These particulars were rejected by me and no evidence has been given by the petitioner on the allegations about these persons even in accordance with the allegations in Schedule I-B.

I am now concerned with only the allegations that each voter of village Chhitauni had been paid Rs. 3/- by Sri Kashi Nath Pandey through Sri Rajdeo Upadhyaya *alias* Bharthi Ji at noon on 24th February 1957. Though the allegation was that this amount had been paid by Sri Kashi Nath Pandey through Sri Rajdeo Upadhyaya *alias* Bharthi Ji which did not necessarily imply even the presence of Sri Kashi Nath Pandey at the time of the distribution of this money, yet evidence has now been given that Sri Kashi Nath Pandey himself distributed this

money to the voters and others in the presence of Sri Rajdeo Upadhya alias Bharthi Ji since the witnesses Brij Raj P.W. 1, Mitthu P.W. 23, Chokat P.W. 24 and Darhu P.W. 25 stated that the money had been distributed by Sri Kashi Nath Pandey himself to all the village people, though Sri Bharthi Ji was also present and was writing down the names of those to whom the money was being paid.

Rajdeo P.W. 22, however, stated that Sri Pandey had distributed the money to 10 or 12 men and subsequently Sri Bharthi Ji had paid it to others. The money was paid to about 100 persons though in the presence of some of them it was paid to only 50 or 60. According to Mitthu P.W. 23 even the ladies and the children had been given this amount. I can understand that money might have been paid to each of the voters to influence them to vote for Sri Kashi Nath Pandey and the adult men and women to whom it had been paid might have been voters, but it is not possible to believe that it would have been paid even to children who could not have been voters. This Mitthu P.W. 23 was a volunteer of Sri Shibban Lal Saxena and yet he also accepted this money. It would not have been unknown to Sri Kashi Nath Pandey and his supporters that Mitthu was a volunteer of Sri Saxena and, therefore, even if the money had been paid to the voters it would not have been paid to him.

On the other hand, Sri Kashi Nath Pandey R.W. 26 and Sri Rajdeo Upadhya R.W. 2 denied this story or that any money had been distributed to anybody in this manner. Tulli R.W. 11, Sita Ram R.W. 12 and Thagai R.W. 13 of this village stated that no such meeting had been held nor any money had been paid to any of the village people. There is no reason to disbelieve their testimony and to accept the statements of the petitioner's witnesses. It is not possible to hold on this evidence that any money had been paid by Sri Kashi Nath Pandey to the voters of Chhitauni village and the issue is decided against the petitioner.

Issue No. 3.—The allegations in respect of this issue are given in paragraph 8 and Schedule I-C and have been further amplified in the further particulars (72 Ka). No evidence has been given to prove that any money had been paid to Thakur Lonia and Naipal Mahto or a cycle had been given to Sita Ram Rai of Khadda or that a cycle and a radio set had been given to Balkunth Nath and these points are decided against the petitioner. Evidence has been given to prove that a cycle each had been given by Sri Kashi Nath Pandey and the allied Assembly candidates to Sita Ram Hajjam, Dhondha and Raj Nath Sharma at Ramkola.

Basant Lal P.W. 2 of Ramkola stated that Sri Kashi Nath Pandey and Sri Bharthi Ji had come to his village 7 or 8 days before the polling day and had held a meeting of their workers which was attended by him also along with 50 or 60 other persons of the village, that it was said in that meeting that the influential persons of the village were Sita Ram, Dhondha Prasad and Raj Nath Sharma and they were then sent for and when they came and were asked for whom they would vote they replied that they would vote for Sri Saxena and they were then told that they should vote and secure votes for the Congress and they would be given cycles and that they were then given a new cycle each. He also stated that Sri Kashi Nath Pandey had brought five new cycles with him, two of which had been distributed there. In cross-examination, he explained that all the three were the workers of Sri Saxena and though Sita Ram and Dhondha Prasad lived in his village Raj Nath Sharma lived in Dharampur six miles from there and he had been called from that village, and that after having got these cycles these three persons had come over to Sri Kashi Nath Pandey and had worked for him. It is difficult to believe that the workers of a candidate could be so easily won over, since workers must have been only those who were more ardent supporters of a party.

Vishwanath P.W. 16 of Ramkola stated that he and his village people had wanted to vote for Sri Saxena but 8 or 10 days before the polling day Sri Kashi Nath Pandey, Sri Bharthi Ji and some others came to his village with cycles and after calling Dhondha, Sita Ram and one other man Sri Kashi Nath Pandey gave a cycle each to those three and told them that he should get votes for him. He definitely stated that these three were the workers of Sri Kashi Nath Pandey and it was for this reason that the cycles were given to them. In fact he had made this statement with a note of exclamation saying why Sri Kashi Nath Pandey should have given the cycles to them meaning himself and his associates, and had given them to his own workers. According to this statement these three persons were never the workers of Sri Saxena, but had been Sri Pandey's workers from the very beginning. He also did not say that any meeting of the workers of Sri Pandey had been held and these three had been called when it had pointed out in that workers meeting that those three were the most influential persons in the locality. He thus contradicted the statement of the previous witness.

On the other hand, Sri Kashi Nath Pandey R.W. 26 and Rajdeo Upadhyaya R.W. 2 denied the entire allegations stating that they had not held any such meeting and had never given these three persons any cycles. These three persons Raj Nath Sharma, R.W. 6, Sita Ram R.W. 7 and Dorha Prasad R.W. 8 themselves entered the witness-box and denied that any of them had received any cycle.

It is not possible to hold on this evidence that any cycles had been given to these three persons and this part of the issue is also decided against the petitioner.

Issue No. 4.—No evidence has been given by the petitioner on this issue and it is decided against the petitioner.

Issue No. 5.—The allegations in respect of this issue are given in paragraph 9 and Schedule II-A of the petition. It is said that Sri Kashi Nath Pandey and other persons interested in his election with his consent interfered directly and indirectly with the free exercise of electoral rights by electors and that 150 persons named in Schedule II-A had been paid Rs. 10/- to Rs. 20/- each as a subsidy by the Tahsildar Hata in village Pipra Tewari on 18th February 1957 and in village Mathia Raja and Ghortap, Singhpur, Bhagnath and Pipra Humel on 20th February 1957 under the personal supervision of Sri Suraj Bali Pandey who was canvassing for himself and for Sri Kashi Nath Pandey in a joint election campaign. It is said that all the voters in these villages were against the Congress but had become its active supporters after this free distribution of money.

The allegations meant that these amounts were given to the various persons as consideration for voting for Sri Kashi Nath Pandey. It is not said that this money had been distributed ostensibly for some other purpose though with a motive to influence the recipients to vote for the Congress or Sri Kashi Nath Pandey.

The only witness produced in support of the allegation is Sri Najmul Hasan Zaidi P.W. 3 who was Flood Relief Officer at Deoria since October 1956. He was made to file extracts from the relevant registers to show that relief had been given in the years 1955-56 and 1956-57 for the victims of the flood relief in the shape of remission in revenue, the grant of loans by Taqavi and gratuitous distribution of cash, cloth and grains etc. The witness definitely stated that this relief had been distributed because there were reports of distress due to floods and drought. These extracts do not show at all any payment of any money to the various persons named in this Schedule II-A. It is also not possible to appreciate how this flood relief comes within the allegations mentioned in this Schedule. In fact there is absolutely no evidence about the allegations in respect of this issue and it is decided against the petitioner.

Issue No. 6.—The allegations in respect of this issue are to be found in paragraph 9 and Schedule II-B of the petition. The names of 14 persons who are Sarpanches of different villages have been given in this Schedule and it is said that they had canvassed for Sri Kashi Nath Pandey and his allied Congress Assembly candidates and had threatened the village people in general in their circles that if they did not vote for them they would be harassed by being involved in false cases which would be decided against them. No evidence has been given by the petitioner to prove that any of these Sarpanches except Achhalber and Ram Jas had given such general threats to the residents of their circles.

Ratan P.W. 20 stated that such general threats had been given by Sri Kashi Nath Pandey, Sri Bharthi Ji and Sri Sheo Prasad but this evidence is irrelevant, being not on any issue. Similarly Raj Kumar P.W. 17, Halder P.W. 18 and Mallu P.W. 19 stated about some particular threats to themselves by Shankar, but these are absolutely irrelevant for the purposes of this issue. Some particular threats by Shankar were also mentioned in this Schedule which were rejected and which did not also mention the threats about which evidence has been given by these witnesses.

Ram Lachhan P.W. 21 stated that Sri Kashi Nath Pandey, Sri Bharthi Ji and Sri Sheo Prasad had come to his village and after collecting people at the Panchayat centre had told them that if they did not vote for the Congress they would be very much harassed in different ways. The witness then added that Achhalber and Ram Jas were also with them. This did not mean that these two had given out any threats to anyone.

The petitioner has thus absolutely failed to prove the allegations in this issue and it is decided against him.

Issues Nos 7 and 13.—The allegations in respect of these two issues are also given in paragraph 9 and Schedule II-B. It is said that certain persons named

therein had given particular threats to particular persons. No evidence has been given by the petitioner in respect of any threats by any one. The issues are, therefore, decided against the petitioner.

Issue No. 8.—The petitioner has put in all his ammunition in this shot, but has failed to hit the target, though he might have been able to hit some other strange animal. He might have been able to prove that the Government or Sri C. B. Gupta, Minister for Planning, Industries, etc., and the Treasurer of the Congress Parliamentary Board or the local officers of Deoria had supported the wrong-doers because they were being supported by Sri Kashi Nath Pandey belonging to the Congress Party and had also caused financial loss to the Lakshmi Devi Sugar Mill, but he has failed to prove how this conduct on their part comes within the definition of corrupt practices as given in Section 123 of the Representation of the People Act or how it comes within any other provision under which an election can be set aside.

It is said in paragraph 10 that Sri Kashi Nath Pandey and others interested in his election with his consent exercised undue influence directly and indirectly on some of the electors and candidates to abstain from exercising their rights as electors and citizens of the Republic of India and particulars of these are given in Schedule III. Though it is said that undue influence was exercised on some of the electors and candidates, yet it was only to abstain from exercising their candidates.

In Schedule III is given a long story about the Satyagrah in the Lakshmi Devi Sugar Mill, Chhitauni its causes and the indifference rather refusal of the District Authorities to stop the so-called Satyagrahies from trespassing into the mill and physically stopping its work by lying on the weigh-bridges and thus not allowing the cane of the cane-growers to be weighed, in spite of Sri Madan Pal Singh, the Manager of the Mill, approaching the higher authorities and Sri C. B. Gupta. To appreciate the allegations and the evidence on this issue, it would be better if the entire allegations as given in Schedule III are reproduced here. This Schedule runs as follows:—

Respondent No. 1 and Shri Rajdeo Upadhyia and Shiv Prasad, the two Assembly candidates seeking election from Sinduwa Jobna Double member Assembly Constituency on the Congress Ticket and their agents and supporters started a strange so-called Satyagrah at Lakshmi Devi Sugar Mill Ltd., Chhitauni for the reinstatement of 76 workmen who were dismissed in pursuance of the order of the Supreme Court of India, dated the 24th October, 1956. The so-called Satyagrah was continued by respondent No. 1 and his allied Congress Assembly candidates, their agents and others interested in their election from 17th January, 1957 to 15th February, 1957 for showing themselves off as champions of labour and to woo the labour to vote for him and for the other Congress candidates and to keep engaged Shri Madan Pal Singh, the Manager, who was a candidate for Parliament as well as U.P. State Assembly, so that he might not be able to devote his attention and energies to his election campaign. The said Shri Madan Pal Singh brought all the facts and circumstances to the notice of the district authorities of Deoria and also of the State Government, but no step whatsoever was taken either by the District authorities or the Government to let the factory function by the trespassers from the Sugar-cane weigh-bridge of the said Lakshmi Devi Sugar Mills Ltd., though Police and Magistrate were present even on 17th January, 1957. Due to the stoppage of the Mills, harassment was caused to the cane-growers and the Congress workers of respondent No. 1 told the cane-growers that respondent No. 1 could alone save them by allowing the Mills to start crushing and thus promises for voting for Respondent No. 1 and Shri Rajdeo Upadhyia and Shiv Prasad, Congress candidate for State Legislative Assembly, were extorted from them.

Sri C. B. Gupta, ex-Hon'ble Minister for Planning and Industries, U.P., in his zeal to support the cause of the respondent No. 1 who is a labour leader of his party, manipulated things in such a way that no steps to remove the trespassers were taken till the 15th February, 1957. The Police posted at the said Mills had orders to arrest the said Shri Madan Pal Singh on the slightest pretext and thus he was virtually under house arrest during the period of this so-called Satyagrah.

The ex-Hon'ble Minister Shri C. B. Gupta then Minister for Planning and Industries in the course of his election tour, visited various places in Deoria District and reached Gorakhpur in the night of 12th February, 1957. Respondent No. 1 and his supporters had threatened some of the Directors and parties of the said Mills that the said Hon'ble Minister had studied the condition of this Mill and very soon an authorised Controller of the Mill would be appointed. The threat of the appointment of an authorised Controller frightened the directors and they were asked by Respondent No. 1 to see the said Hon'ble Minister in the night in the Inspection House at Gorakhpur. Some of the partners met him at the Inspection House where he told them that their Mills would not be allowed to start crushing unless they dismissed their Manager, Shri Madan Pal Singh, and agreed to the terms of the respondent No. 1. They were highly nervous and frightened and were not even allowed to explain their position. The said Hon'ble Minister directed them to get in contact with respondent No. 1. In the morning of 13th February, 1957 they again saw the said Minister when he told them that he could request respondent No. 1 to settle their matter and before leaving Gorakhpur he telephoned to respondent No. 1 at Padrauna to talk with them. On 13th February, 1957 the parties of the said Mills after their return from the Inspection House, telephoned to respondent No. 1, and entered him to come to Gorakhpur. The respondent No. 1 reached Gorakhpur in the night of 13th February, 1957. On the 14th February, 1957, respondent No. 1 asked the partners present *inter-alia* to dismiss Shri Madan Pal Singh and to re-instate the 76 dismissed employees and also those whose cases were pending in courts and if they did not dismiss Shri Madan Pal Singh just then, they should ask Shri Madan Pal Singh to withdraw from election contests for the Lok Sabha and the U.P. Assembly, for both of which he was a candidate. The partners present told respondent No. 1 that they could not agree to his demands as dictated by him. The respondent No. 1 then suggested that the demands may be referred to arbitration of Shri O. N. Misra, Labour Commissioner, U.P. for arbitration. The parties present in the meeting were highly frightened by the threat of appointment of an authorised Controller and also by the wrath of the said then Hon'ble Minister for Planning and Industries and they agreed to refer the matter to arbitration. Shri R. P. Maheshwari, Regional Conciliation Officer, Gorakhpur and respondent No. 1 prepared a draft agreement, got it signed by those directors who were present, excluding Shri Ratan Lal Kedia and Shri Bholiram Jhunjhunwala, who signed it at their place. The said R.C.O., Gorakhpur, got it signed by them.

After the signing of the alleged agreement, the respondent No. 1 asked the Chief Minister, U.P., on phone to allow the said mill to start working and also to direct the Cane Commissioner, U.P., to issue necessary directions to the local Co-operative Development Unions to start the cane supply which had been stopped, and consequently everything as desired by respondent No. 1 was done. Mills started crushing on 15th February, 1957. As promised the partners asked Shri M. P. Singh to withdraw from the contest to the U.P. Legislative Assembly and the Lok Sabha, for both of which he was a candidate and he under threat of dismissal had to file retirement applications from both the contests. The retirement applications were filed on the 20th February, 1957. Accordingly he ceased to be a contesting candidate for the Sidhuwa Jobna Assembly Constituency where election was fixed for 3rd March, but his application for retirement from the Hata Lok Sabha Election was a day too late as Election in one part of this constituency was to begin on 28th February, but even though he could not cease to be a contesting candidate for the Lok Sabha, he was not permitted to do any work for his election. During the period of the so-called Satyagrah Shri Madan Pal Singh's personal character and conduct was painted in the darkest colour by the respondent No. 1, Shri Gopal Krishan, Shri Bhagwat Sahi, and Shri Rajdeo Upadhyaya in various meetings held at Deoria, Ramkola, Captaiganj, Chhitauni, Padrauna, Kasia, Lakshmi Ganj, and the election campaign of the respondent No. 1 was a regular campaign of vilification of Shri Madan Pal Singh.

What had actually happened during this period is not quite clear from this Schedule. The case put forward in evidence is as follows. Most of the facts are not disputed and the respondent's contentions where they are disputed are also given below:—

Sri Madan Pal Singh, who had also filed his nomination forms for standing for the House of People from this Constituency and for the State Legislative Assembly from Sidhuwa Jobna Constituency, had been the Manager of this Mill since long and till October 1957. In 1952, 76 workmen of this Mill had resorted to tools-down strike and Sri Singh wanted to dismiss them, but he could not as certain matters were pending before the Labour Appellate Tribunal. He,

therefore, asked the Tribunal for permission to dismiss them which was refused and a Writ in the High Court of Allahabad against this refusal was also refused. An appeal against the judgment of the High Court was, however, successfully filed in the Supreme Court which decided on the 24th October, 1956 that the management could dismiss these 76 men and Sri Madan Pal Singh dismissed them on the 29th October, 1956. These 76 workmen belonged to the labour union affiliated to the Indian National Trade Union Congress of which Sri Kashi Nath Pandey was the General Secretary. There was also another union which was affiliated to the United Federation, of which Sri Shibban Lal Saxena was the President. The local unions are called by different names in the different Sugar Mills which are about ten in this Constituency. Sometimes a labour union of one mill having a particular name is affiliated to Sri Shibban Lal Saxena's union and a labour union with a similar name in another mill is affiliated to Sri Kashi Nath Pandey's union. It is, therefore, not necessary to name the unions as they would cause confusion and if necessary, I would call the union as the case may be of Sri Saxena or Sri Pandey. Sri Kashi Nath Pandey was, therefore, naturally interested in the reinstatement of these 76 workmen and there was some agitation about it and Sri Kashi Nath Pandey went about seeing the Labour Commissioner, etc., about it. It was also given out if these 76 workmen were not reinstated they would resort to Satyagrah. A meeting was held on the 4th January, 1957 in front of the Mill Gate in which Sri Bhagwat Sahi, R.W. 25 is said to have declared that the judgment of the Supreme Court was wrong and he exhorted the workers to break the machinery, to resort to all illegal means and to start Satyagrah. After that another meeting was held on the 13th January, 1957 which was also attended by Sri Kashi Nath Pandey who also exhorted the workers to start Satyagrah assuring them that the Government and the authorities would support the workers and would not take any action against their illegal activities. Sri Bhagwat Sahi and Sri Kashi Nath Pandey denied that they had exhorted the workers to start Satyagrah and explained that in fact they had asked them to wait and adopt constitutional means to get redress for themselves, but the workers did not listen to them. Ultimately Satyagrah was started by the 76 workmen from the 17th January, 1957 which lasted upto the 15th February, 1957. Sri Kashi Nath Pandey's contention is that he took no interest in this Satyagrah as it was against his advice. During this period the 76 workmen used to lie down on the weighbridges, thus stopping the cane brought by the cane-growers to be weighed and also the working of the Mill. The Sub-Divisional Magistrate and the Police used to watch the whole thing and refused to remove these so-called Satyagrahis who were obviously trespassers in the Mill, though it was their obvious duty to stop their trespass on such a mass scale. There is no doubt that trespass is a non-cognizable offence, but when it is committed by a mass of persons who use force, the offence falls under section 147, I.P.C., which is a cognizable offence. There is also apprehension of breach of peace as nobody can be expected to sit quietly if his premises is raided by so many persons and if his property is interfered with by them. It must have been a sorry spectacle to see the Executive and the Police Authorities abdicating their functions and looking on helplessly the commission of offences before their very eyes—may be because they had express directions or hints to act in that manner or they anticipated for some reasons or the other that their conduct in not suppressing this lawlessness indulged in before their very eyes would be over-looked by the higher authorities. It must have also created want of confidence among the Mill owners and its law abiding staff and innumerable other persons who would have been watching this lawlessness in the vindication of right against wrong. When the District Authorities did not do their duties and the Satyagrah was going on Sri Kedia, the Managing Director of the Mill, and Sri R. K. Lahri, R.W. 3, the Secretary of the Mill, saw Sri C. B. Gupta at Lucknow with a cheque for Rs. 17,000/- as donation to the Congress Election Fund on the 20th January, 1957 and after they had handed over the cheque to Sri C. B. Gupta, Sri Kedia narrated his grievance about this Satyagrah to Sri C. B. Gupta but Sri C. B. Gupta directed him to see the Secretary in the Industries Department. When they saw him, he complained to them against Sri Madan Pal Singh, the Manager, and wanted to see him. Sri Singh was then called to Lucknow and he along with Sri Kedia and Sri R. K. Lahri saw Sri C. B. Gupta on the 22nd January, 1957. There was some heated talk between Sri C. B. Gupta and Sri Madan Pal Singh because C. B. Gupta wanted the 76 workmen to be reinstated and Sri Madan Pal Singh was adamant in not doing so. Sri C. B. Gupta told Sri Madan Pal Singh that unless these workmen were reinstated the Mill would not be allowed to work except after appointment of an authorised Controller and then turned him out of the house at the same time telling Sri Kedia that either he (Sri Kedia) should dismiss Sri Singh or ask him to withdraw from the election contest. Sri C. B. Gupta, who was examined on commission, has given evasive answers about this meeting, but has denied that there was any talk at the time about Sri Madan Pal Singh's

dismissal or withdrawal from election contest or that he had exercised any influence on the Directors or any one else to make Sri Singh withdraw from the contest or for his dismissal. He has not been clear how the proceedings for appointment of an authorised Controller for this Mill had started. Such proceedings had started and there had been a Notification about it long after in the Government of India Gazette, dated the 17th October, 1957, but subsequently the proceedings were dropped. The lawlessness at the Mill was allowed to continue and the management filed a Writ Petition in the High Court in which they claimed an interim relief which was refused and the Writ application was allowed to be dismissed. In reply to this Writ application an affidavit was filed by the Deputy Superintendent of Police, Deoria in the High Court in which he stated that nobody had asked the authorities for the removal of the so-called Satyagrahies which explanation was rather amusing because whether anybody had or had not asked him, it was the duty of the Executive and the Police Authorities to stop this lawlessness and the commission of criminal offences before their very eyes. Moreover, the Management had been writing letters continuously to the District authorities and had been approaching the Sub-Divisional Magistrate. However, on the 4th February, 1957 the Management decided to run the Mill by getting the Satyagrahies bodily lifted and removed from the weighbridges by the cane-growers and some members of the staff of the Mill and weighing of the canes started with the result that the Mill also started functioning. This continued for about an hour and then the Sub-Divisional Magistrate intervened in the matter, asked him to stop the working of the Mill and to end the dispute by withdrawing from the contests and by reinstating the workers. The Police then forcibly removed the cane-growers and the other employees from the weigh-bridges and when there was some scuffle arrested some cane-growers and others with the result that the Satyagrahies again occupied the weigh-bridges and the weighing of the sugar-cane stopped with the consequence that the mill also stopped working. After the interim relief in the writ petition had been refused by the High Court the Board of Directors realised that their mill could not work so long as Sri M. P. Singh continued to stand for election and to be the manager of the mill and Sri Kedia and Sri Moti Lal Tekriwal, R.W. 4, therefore, asked him to withdraw from the election contests and they obtained from him withdrawal forms duly signed by him, though he assured them that even his withdrawal from the election contests would not stop the Satyagrah. Sri Kedia has not been produced. Sri Moti Lal Tekriwal denied that he had any talk with Sri Singh about the latter's withdrawal from the election contest. However, by the time the withdrawal forms and his contest had been filed, the time for withdrawing from the Parliamentary Constituency had expired and only his withdrawal from the Assembly Constituency turned out to be valid. Sri Singh, however, did not do any canvassing though his ballot boxes were put at the time of the polling and some votes were polled for him. The respondent's contention is that Sri Singh had never intended to nor had retired from the contest and had continued standing for election from the Parliamentary Constituency. On the 12th February, 1957 Sri C. B. Gupta came to Gorakhpur and Sri Shibban Lal Saxena, P.W. 38 at the request of the cane-growers of U.P. and Bihar and the Directors of the Mill and in the company of some of the directors including Sri Kedia and Moti Lal Tekriwal met Sri C. B. Gupta at the Canal Inspection House in connection with this Satyagrah. After Sri Saxena had brought these matters to Sri C. B. Gupta's notice, the latter turned to Sri Moti Lal Tekriwal and remarked that he had told the directors at Lucknow that they should ask their manager to withdraw from the election contest or to dismiss him but they had done neither and then impressed upon him that the factory would not be allowed to run unless one of these things was done and if the directors persisted in doing anything he would appoint an authorised controller. Sri Kedia then informed Sri C. B. Gupta that he had already persuaded Sri Singh to file a withdrawal form and he had done so, but it was rejected by the Returning Officer. Sri Gupta replied that the matter should be settled with Sri Kashi Nath Pandey. They came away from there. Sri Kashi Nath Pandey was, however, not found. Sri Kedia has not been produced and Sri Tekriwal denied that he had any talk with Sri C. B. Gupta about the standing or withdrawing from the election of Sri Singh, though he did not either admit or deny specifically whether he had seen Sri C. B. Gupta on that date in the company of Sri Saxena. Neither party made any attempt to get a straight forward answer on the point from him, probably realising his difficulties. Sri C. B. Gupta admitted that Sri Saxena had seen him that day but stated that there was no talk between them about the affairs of this mill and that no directors of the mill were present there. After that an agreement was arrived at between Sri Kashi Nath Pandey's union and the management referring this dispute about the workmen and the dismissal of Sri Singh to a Board of three arbitrators, namely Sri O. N. Misra, Labour Commissioner as Chairman, Sri Moti Lal

Tekriwal, R.W. 4 and Sri Kashi Nath Pandey on the 15th February, 1957 and the Satyagrah was called off. The arbitrators could not give their award within the statutory period and the agreement was renewed but in the new agreement the demand for the dismissal of Sri Madan Pal Singh was omitted. There was then a compromise and the reference to the arbitration came to an end by the compromise. Some workers were reinstated and Sri M. P. Singh was ultimately dismissed in October 1957 in fulfilment of the demand of Sri C. B. Gupta. Sri Moti Lal Tekriwal has half-heartedly stated that though no reasons were given to Sri Singh for his dismissal yet they were that the mill was running at a loss for some years and the expenses of litigation were mounting high. Sri Kashi Nath Pandey exploited the situation by bringing it to the notice of the workers of the other sugar mills in the constituency in his speeches in their meetings held by him, with the result that a large number of workers of Sri Saxena's union joined Sri Pandey's union and would have naturally voted for him.

It is necessary to examine the truth or the falsity of the disputed facts only if they come within the corrupt practices as mentioned in Section 123 of the representation of the People Act or if the allegations have been made about them in the petition and it is not necessary to examine them otherwise. It has been argued that since evidence has been given by both the parties on matters not to be found in the petition and no objection has been taken by the respondent at the time, the petition may be ignored and the case may be decided on the evidence led and recorded. The respondent has replied that he did not object at the time as it would have put the petitioner on his guard and he (petitioner) would have led other evidence consistent with his allegations in the petition and the respondent would have been deprived of showing to the Court that the fact that the actual evidence given was different from the allegations in the petition was intrinsic evidence of both being untrue. It is not possible to accept the petitioner's contention and the Tribunal cannot decide the case on matters which have not been raised in the petition, even though evidence on them has been given by both the parties.

The allegations in the petition and the Schedule can be divided into the following parts:—

- (1) The dismissal of 76 workmen by Sri M. P. Singh was valid and legal and Satyagrah started by these workmen was unjustified. It was also illegal and a criminal offence and yet it was instigated and supported by Sri Kashi Nath Pandey and the Government and the District Authorities did not suppress it.
- (2) The object of the Satyagrah which was ostensibly the reinstatement of these workmen, was in fact (a) to influence the votes of labour, (b) to keep engaged Sri M. P. Singh in it and thus not to give him time to carry on his canvassing and (c) to harass the cane-growers.
- (3) Sri C. B. Gupta, a Minister of the Government and also a member and treasurer of the State Parliamentary Board, manipulated things in such a way that no steps were taken to remove the trespassers till 15th February, 1957 and Sri Madan Pal Singh was threatened to be arrested and was kept under house arrest.
- (4) On the arrival of Sri C. B. Gupta at Gorakhpur on 12th February 1957, Sri Kashi Nath Pandey and his supporters threatened some of the Directors and Partners of the said mill that Sri C. B. Gupta had studied the condition of that Mill and very soon an authorised Controller of the Mill was to be appointed. This threat frightened the Directors and some of them saw Sri C. B. Gupta in the Inspection House and were told that the Mill would not be allowed to work unless they dismissed Sri Singh and agree to the terms of Sri Kashi Nath Pandey.
- (5) In the morning of 13th February 1957, the Directors again saw Sri C. B. Gupta who told them that he could request Sri Kashi Nath Pandey to settle the matter and telephoned to Sri Kashi Nath Pandey at Padrauna to talk with them. On the same date the Partners of the Mill after their return from the Inspection House also telephoned to Sri Pandey and intimated him to come to Gorakhpur. Sri Pandey came to Gorakhpur in the night of 13th February 1957. On 14th February, 1957 Sri Pandey asked the partners present to dismiss their Manager Sri Singh and to reinstate the 76 dismissed workers and if they did not dismiss him just then they should ask him to withdraw

from election contests for the House of People and the U.P. Assembly. It was only on this date that the demand for withdrawal of Sri Singh from election contest was made. No where before in these allegations it has been said that there had been any such demand expressed or implied prior to that date. The partners did not agree and then a reference to Arbitration was made.

(6) After the agreement had been signed the Satyagrah was withdrawn and the working of the mill continued.

(7) Sri Pandey addressed meetings of the workers of the various other Mills in the constituency and boasted of his doings with the result that many of the workers taking him to be their champion left Sri Saxena's union and joined his union which naturally affected their voting also.

(1) So far as this point is concerned the dispute is whether this Satyagrah was or was not instigated and supported by Sri Kashi Nath Pandey. Sri Kashi Nath Pandey has denied that he had instigated or supported this Satyagrah. Without going into the evidence on the point I will assume that Sri Kashi Nath Pandey had instigated and supported it.

(2) I will assume that the object of the Satyagrah was not only to get the reinstatement of these workmen and dismissal of Sri Madan Pal Singh but it was also the influencing of the votes of the labour in Sri Pandey's favour. There is absolutely no evidence on behalf of the petitioner that its object was also to keep Sri Madan Pal Singh engaged and thus not to give him time to carry on his canvassing, though incidentally when there was trouble in the Mill Sri Madan Pal Singh as General Manager had become engaged in dealing with it by performing his lawful duties for which he was being paid a salary of more than Rs. 2,000 per month and could not get time to keep himself engaged in his political activities. Similarly, there is no evidence on behalf of the petitioner to show that the object of Satyagrah was to harass the cane-growers, though again incidentally it had harassed them as their canes could not be sold and were deteriorated. The labour employed in the ten Mills was about 15,000 and by sponsoring, whether legally or illegally the cause of these 76 workmen Sri Kashi Nath Pandey expected to have their votes in his favour, but on the other hand the number of cane-growers in respect of this Mill itself was about 25,000 and in all the Mills was about more than 1,50,000. The Satyagrah during this period of about a month had certainly annoyed and harassed these 25,000 cane-growers attached to this Mill and would have also affected the feelings of the cane-growers attached to the other Mills. It had, therefore, the effect of influencing the votes of the cane-growers in the wrong way i.e. against Sri Kashi Nath Pandey. The object of the Satyagrah so far as Sri Kashi Nath Pandey was concerned, therefore, could not have been to harass the cane-growers.

(3) Without going into the evidence I will assume that Sri C. B. Gupta and at his instance the Government and the District Authorities did not take any action to remove the trespassers in order to enhance the influence and prestige of Sri Kashi Nath Pandey who was of their party. About the threat to Sri M. P. Singh that he would be arrested, the evidence is that this threat was given on 4th February 1957 when the Satyagrahies had been removed and I will assume that such a threat had been given. There is, however, no evidence to prove that he was kept under house arrest.

(4) There is no evidence to prove these allegations, i.e. that Sri Kashi Nath Pandey and his supporters threatened some of the Directors and partners of the Mill, that Sri C. B. Gupta had studied the conditions of that Mill and very soon an authorised Controller of the Mill would be appointed. I will, however, assume that the Directors Sri Kedia and Sri Moti Lal Tekriwal had seen Sri C. B. Gupta at the Inspection House Gorakhpur and were told that the Mill would not be allowed to work unless they dismissed Sri Singh and agreed to the terms of Sri Kashi Nath Pandey. Evidence has, however, also been given on behalf of the petitioner that Sri C. B. Gupta had also asked these Directors to make Sri Singh withdraw from the election contest. This allegation had never been made in the pleadings and, therefore, cannot be entertained. It has been argued on behalf of the petitioner that one of his allegations in the Schedule had been that on the 14th February 1957 Sri Pandey had asked the Directors and the partners to dismiss their Manager and to reinstate the 76 workers and that if they did not dismiss the Manager Sri Madan Pal Singh just then, they should ask him to withdraw from the election contest, that as such these were the terms of Sri Kashi Nath Pandey and that the petitioner had also alleged in this Schedule that Sri C. B. Gupta had

asked the Directors to dismiss Sri Singh and to agree to the terms of Sri Kashi Nath Pandey without repeating those terms again, and that this meant that the petitioner's contention was that Sri C. B. Gupta had asked these Directors to make Sri Singh withdraw from the contest. It is not possible to accept this argument, since there is no evidence on record to prove that these were the terms of Sri Kashi Nath Pandey and were communicated to these Directors on 14th February, 1957. Moreover, Sri M. P. Singh himself stated that when he had signed the withdrawal forms on 4th February 1957 he had told the Directors Sri Kedia and Sri Moti Lal that it was a bluff on the part of Sri Pandey and his supporters and the Satyagrah would not be stopped but would continue till he was dismissed and the 76 workmen were reinstated. This is his clear admission that the sole object of the Satyagrah was to extort the compliance of these two demands and not the withdrawal of Sri Singh from the election contest.

- (5) There is no evidence to prove these allegations.
- (6) This is not disputed between the parties.
- (7) This is not admitted by Sri Pandey but I will assume that he had done all this.

The facts proved and which I have assumed to be proved are thus as follows:—

Though the dismissal of these 76 workmen was legal and within the powers of Sri Madan Pal Singh, the Manager of the Mill, yet Sri Kashi Nath Pandey who was the General Secretary of the Union to which these 76 workmen belonged supported their demand of reinstatement and in order to get it accepted instigated those 76 workmen to start this illegal Satyagrah which was in fact a criminal offence and thus created a situation in which the Mill was closed and the authorities and the Government of which Sri C. B. Gupta was a Minister did not suppress and encouraged it in order to enhance his prestige and influence with labourers to secure their votes for him. The object and the result of the Satyagrah was that the labour votes turned in favour of Sri Kashi Nath Pandey and Sri Madan Pal Singh was also not able to carry on his canvassing due to being engaged in meeting it. Sri C. B. Gupta told the Directors on 12th February 1957 that the Mill would not be allowed to work unless Sri Singh was dismissed and the 76 workmen were reinstated. It must be reiterated that throughout the Schedule there is not a word about the withdrawal or retirement of Sri M. P. Singh except where it is said that it was on 14th February 1957 that Sri Kashi Nath Pandey asked the Directors and the partners to make him withdraw from the election contest if they were not dismissing him at that time and for this allegation there is no evidence. The case is, therefore, to be decided only on the facts mentioned above and the evidence given about the demand of Shri C. B. Gupta at Lucknow and on 12th February 1957 for withdrawal or retirement of Shri M. P. Singh from the election contests cannot be considered as it was never alleged in the pleadings.

We have, therefore, to see how these facts bring the case within the mischief of any of the corrupt practices as mentioned in Section 123 of the Representation of the People Act.

It has been argued that the offer of Sri C. B. Gupta to the Directors of the Mill on 12th February 1957 at the Canal Inspection House, Gorakhpur, that he would allow their Mill to start working if they dismissed Sri Singh and make him retire from the election contests, amounted to an offer of bribery under section 123 clause (1). As already stated above the demand of Sri C. B. Gupta for withdrawal or retirement of Sri Singh from the election contests cannot be considered as it was never pleaded. The other part obviously does not come within the definition of bribery as given in this section because it had nothing to do with the election.

It has been argued that the Satyagrah even without the demand for the withdrawal or retirement of Sri Singh from the election contests amounted to undue influence as defined under section 123 clause (2). Undue influence as given in this clause is any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right. 'Electoral right' has been defined in section 79 clause (d) as right of a candidate to stand or not to stand as or to withdraw from being, a candidate, or to vote or refrain from voting at an election. As already mentioned above the question of interference with the right of a candidate to stand or not to stand or to withdraw from the election does not now arise, and we are left with

the question of interference with the right to vote or refrain from voting at an election. It is undue influence only which is a corrupt practice and not every influence. Influence or persuasion can very well be exercised by one person over another to influence the elector's right of votes and in fact it is the essence of democracy. In a democracy a party by publishing its policy on the different matters affecting the welfare of the country and by explaining it in speeches etc. of the various speakers seeks to influence the electorate to vote for it. Organising strikes and demonstrations to carry on fasts and similar other activities to show off their sympathy with them in the cause of the genuine or supposed grievances of a large body of persons by those attempting to win over their votes, is a necessary evil of democracy and is resorted to by every party or individual though it is called policy and general concern for the welfare of these people when resorted to by the members of the party in power and political stunt when resorted to by the others. It is only when the element of compulsion comes in that influence that it becomes undue as in such a case the exercise of free will is taken away and the Election Law comes down on it. Compulsion can be by means of actual threat or by other physical means and it can also be by inducement or by conveying to the mind of the person sought to be influenced that non-compliance with the wishes of the person offering the inducement may result in some physical, spiritual or mental harm to him or to another person in whom he is interested. Is it possible to say that this Satyagrah had the effect of unduly influencing anybody to vote in a particular way? To answer this question in the affirmative, we must be satisfied with the identity of the person on whom undue influence was exercised, by whom it was exercised and the time and place, when and where it was exercised. There is no evidence that any voter (in this case it is said that labour votes had been influenced as they saw that Sri Kashi Nath Pandey was powerful and could support the workmen even when their demands were illegal and this fact had been placarded by Sri Kashi Nath Pandey in the meetings of the workmen of the other Mills which he has addressed during his election campaign) had been threatened or had been physically compelled to vote in favour of Sri Kashi Nath Pandey or that it was conveyed to him (voter) that some harm would come to him if he did not vote for him (Sri Pandey). The labour votes went in favour of Sri Kashi Nath Pandey not because these voters thought that any harm would come to them if they did not support Sri Kashi Nath Pandey, but because they thought that whenever they would be in difficulty Sri Kashi Nath Pandey would champion their cause, irrespective of its being just or unjust. This cannot be said to come within undue influence. Similarly, if Sri Madan Pal Singh was kept engaged in [looking after his Mill which was his lawful duty and could not have had time to do his canvassing, the fact cannot possibly amount to any undue influence on him to affect his right to stand or not to stand].

It is, therefore, quite clear from the above that even if all the allegations in the petition and the Schedule which have been proved or assumed to have been proved do not make out any case of any corrupt practice and the issue is decided against the petitioner.

Issue No. 9.—The allegations in respect of this issue are given in paragraph 13 and Schedule VI of the petition. In paragraph 13 it is simply said that Sri Kashi Nath Pandey and others interested in his election (without naming them) with his consent made statements which were false to their knowledge in relation to the personal character and conduct of Professor Shibban Lal Saxena which were calculated to prejudice the prospects of his election. In Schedule VI, however, it is said that Sri Kashi Nath Pandey, Sri Rajdeo Upadhyaya, Sri Bhagwat Sahi, Sri Gopal Kashyap and others interested in the election of Sri Kashi Nath Pandey had attacked the personal character and conduct of Sri Shibban Lal Saxena in various election meetings held throughout the said Constituency. Then follow some of the instances. In these it is said that Sri Rajdeo Upadhyaya, Bhagwat Sahi, Gopal Kashyap hurled abuses on Sri Shibban Lal Saxena at Deoria, Captainganj, Padruana, Lakshmiganj, Ramkola, Kathkuiyan, Khadda and Bulahawa and that Sri Bhagwat Sahi consistently called him and Shri Madan Pal Singh as men who were adept in giving bribes and influencing the Judges and corrupting the Judiciary of the State and the Union, and he also called them dacoits and thieves.

No allegations had been made in the petition itself about Sri Madan Pal Singh and it is inexplicable how his name came to be in the Schedule. The Schedule was amplified in the further particulars and dates of the various meetings had been given.

No evidence has, however, been given that anything had been said against Sri Shibban Lal Saxena. We are therefore left now with the allegations in respect of Sri Madan Pal Singh. Sri Madan Pal Singh was the Manager of Laxmi Devi Sugar Mills, Chhitauni, and a candidate for election to the House of Parliament

from this Constituency. He had dismissed 76 workmen about whose reinstatement an agitation was going on at the time and a Satyagrah by those 76 workers had started. Before the start of the Satyagrah a meeting had been held outside the Mill Gate on 4th January, 1957 in which the workers were asked to start Satyagrah if these dismissed workmen were not reinstated. Mohan Lal P.W. 26 and Ram Chhabila P.W. 27 simply stated that Bhagwat Sahi R.W. 25 had abused Sri M. P. Singh in that meeting. Mohan Lal P.W. 26 also added that he had called Sri M. P. Singh cruel and tyrannous. They did not say what abusive words had been used by the speaker. Sri Madan Pal Singh P.W. 35 himself stated that the speech of Bhagwat Sahi was couched in a most provocative and filthy language and he had badly abused him as the General Manager of the Mill and had vilified his personal character and at the same time exhorted the workers to even put him in the boilers furnace and so on unless their demands were conceded. Sri Chandra Bhan Singh P.W. 37 stated that Bhagwat Sahi had said in that meeting that Sri M. P. Singh would have to be put into the boilers furnace if his mind was not set right.

Sri Bhagwat Sahi R.W. 25 denied that he had ever said so or had abused Sri M. P. Singh.

Even if we assume that Bhagwat Sahi R.W. 25 had said all that is imputed to him, it does not prove the allegations in the Schedule which were that Bhagwat Sahi R.W. 25 and others had consistently called Sri M. P. Singh as a man who was adept in giving bribes and in influencing the Judges and in corrupting the Judiciary of the State and the Union, and that he was a dacoit and a thief, nor the words actually used by Bhagwat Sahi R.W. 25 come within section 123(4) of the Representation of the People Act according to which the publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

Under the circumstances the petitioner has failed to prove these allegations in the Schedule and the issue is decided against him.

Issue No. 10.—No evidence has been given on this issue and it is decided against the petitioner.

Issue No. 11.—The allegations in respect of this issue are given in paragraph 19 and Schedule X of the petition. It is said in paragraph 19 that Muslim voters who formed a large number of electors in the Constituency were threatened by Sri Kashi Nath Pandey and his allied Congress Assembly Candidates that if they did not vote for the Congress, they would have to go to Pakistan as it would become too hot for them to continue to live in India. In the Schedule are given the names of seven particular persons of some villages and the people in general of three villages Lukhui, Kohar Gaddi, Barhwa Ratanpur and in the particulars are also given the dates on which each of these had been threatened. The allegations, even if taken to be true, do not amount to threats to these Muslim voters because it is not said that Sri Kashi Nath Pandey or his associates had told them that they would send those Muslims to Pakistan who would not vote for them, but the allegations are that they had said that if they did not vote for the Congress, they would have to go to Pakistan as things would be made too hot for them which also meant that if they voted for any other party to power that party might make it too hot for them to live in India and they might have to go to Pakistan. There are parties whose object is to make India a Hindu Raj.

Out of the seven persons named in the Schedule only Majid Husain P.W. 4 of village Captainganj has been produced. He stated that about 19 or 20 days before the elections i.e. on 13th February 1957 he had met near his field Sri Kashi Nath Pandey, Sri Sheo Prasad and Sri Bharthi and when during a talk with them he had told them that he would vote for Sri Saxena, they had told him that all of them would be sent to Pakistan if they did not vote for the Congress.

Sri Sheo Prasad R.W. 1 and Sri Kashi Nath Pandey R.W. 26 denied this story

It is not possible to hold on this evidence that Majid Husain had been so threatened by these persons. Moreover, in the further particulars the date of the threat is given as 11th February 1957 and not as 13th February 1957 which date was given by this witness Majid Husain P.W. 4, and the point is decided against the petitioner.

Jamoorat P.W. 11, Jan Mohammad P.W. 12 and Andhi Mian P.W. 14 of village Lakhui and Nazir Mian P.W. 13 of Lakhwa (probably the two villages are the same) were also produced by the petitioner, but in the allegation no names had been given and their evidence cannot be entertained, but it may be discussed here.

Jamoorat P.W. 11, Nazir Mian P.W. 13 and Andhi Mian P.W. 14 stated that they were told by Sri Kashi Nath Pandey and some others 8 or 9 days before the polling day that if they did not vote for the Congress, they would have to go to Pakistan. This statement does not show that it was a threat from Sri Kashi Nath Pandey, since it might have also been an advice as explained above.

Jan Mohammad P.W. 12 stated that Sri Kashi Nath Pandey and others had told the Musalmans that they had given a grand name to the Congress and that if they did not vote for it, it would be lowered in estimation. This was not a threat at all.

On the other hand, Abdul Razzak P.W. 15 of Lakhui stated that some persons had come to his village but he did not know who they were and no body had threatened them in any way. Mangroo Khan R.W. 14 of Lakhwa stated that Sri Kashi Nath Pandey had not threatened any Musalman in this village.

It is obvious that the petitioner has absolutely failed to prove the allegations in respect of this issue and it is decided against the petitioner.

Issue No. 12.—The allegations in respect of this issue are given in paragraph 24 and Schedule XIV of the petition. It is said that Sri Kashi Nath Pandey and his allied Congress Assembly candidates first cajoled and thereafter threatened Janki Saran of village Kopey Jungle, Majid of Town Area Cuptainganj, Rajpat Harijan of Lilapati and Abhiraj Harijan of Kathkuiyan and many others who were active canvassers and polling agents of Sri Shibban Lal Saxena in various ways with a view to force them to stop his work, but evidence has been led in respect of Janki Saran and Majid only.

Janki Saran.—It is said in the Schedule that Janki Saran's *Arhar* and *Masur* standing crops in village Baluahi were cut and destroyed during the elections at the instigation of Sri Kashi Nath Pandey and he was threatened that his fields would be raided and ruined in Kopey Jungle.

Janki Saran P.W. 15 is the only witness on the point and he stated that two weeks before the polling day he had been called by Sri Kashi Nath Pandey who had told him that since he had been formerly in the Congress, he should rejoin it and should leave Sri Saxena's party or he (Sri Pandey) would ruin his life and the lives of his family members, that he refused to rejoin the Congress and Sri Pandey told him that his field and everything else would be confiscated and he would get him dispossessed from his fields and that he would also be beaten and then his mind would be set right. The witness further stated that a week after his *Arhar* and *Masur* crops were cut. He admitted that these crops were cut about a week before the polling day in his absence and he had come to know about it from his mother and other members of his family.

There is nothing in this evidence to show that the crops had been cut by or at the instance of Sri Kashi Nath Pandey. He only proves a threat by Sri Kashi Nath Pandey who denied that he had ever given such threat to him. It is not possible to hold on the basis of the solitary statement of Janki Saran that he had been threatened in any manner by Sri Kashi Nath Pandey and the point is decided against the petitioner.

Majid.—The allegation about him was that Sri Kashi Nath Pandey had threatened him that his fields would be distributed to Harijans or acquired for Harijan Ashram.

Majid Husain P.W. 4 (it is presumed that he was meant by Majid) stated that on 13th February 1957 Sri Kashi Nath Pandey, Sri Sheo Prasad and Sri Bharthi had come to him and on his refusal to vote for the Congress had told him that he would have to go to Pakistan and that Sri Sheo Prasad had told him that a Harijan Ashram would be built in his field. The allegation, however, was that Sri Kashi Nath Pandey had given him this threat. This evidence is also not believable.

This witness also stated when he was asked what happened to his field, that nothing could happen to it and it was not within Sri Sheo Prasad's power to turn out anybody from his field. He, however, admitted in his examination-in-chief that the Town Area had given him a notice that he should vacate his field as a Harijan Ashram would be built in it, that the Chairman and Bakshi had come to his village and he had turned them out and that now he had received a notice from the Sub-Divisional Magistrate telling him that he was a bully and enquiring from him what he wanted and the matter was still pending. In cross-examination he admitted that the Chairman of the Town Area and six of its members belonged to Jan Sangh party while the remaining three members belonged to the Congress party. It is obvious that Jan Sangh Town Area Committee could not possibly have given a notice to this witness for the acquisition of his field for Harijan Ashram on account of his not voting for the Congress.

This allegation in respect of Majid Husain is, therefore, decided against the petitioner.

Issue No. 14.—The allegations in respect of this issue are given in Paragraph 20 of the petition. It is said that Sri Kashi Nath Pandey and his allied Congress Assembly Candidates getting alarmed at the increasing chances of victory in the election of the original petitioner Sri Kapildeo and of Sri Shibban Lal Saxena arranged to confine Sri Kapildeo illegally inside his house by their agents Saraswati Pandey, Markandey Pandey, Ashwani Kumar Pandey, Hausla Tewari and others of his village so that he might not be able to come out and continue his work of canvassing and Sri Kapildeo actually remained under illegal and forced confinement in his own house from the 24th to the 28th February 1957 and was able to come out only when Sri Shibban Lal Saxena reached there and after Sri Kapildeo had telegraphically informed the Election Commission and the District Authorities by telegram and by applications to the local Police Authorities about this illegal and forced confinement in his own village.

The only evidence on the point is the statement of Sri Shibban Lal Saxena P.W. 38. He stated that on getting information on the 28th February 1957 that Sri Kapildeo had been confined in his own house by Saraswati Pandey, former Zamindar and Sri Kashi Nath Pandey's polling agent and worker, he had gone to his (Sri Kapil Deo's) house in village Deoria, two miles from Padrauna, and had found some men with lathis surrounding his house and that they appeared to be the men of Saraswati Pandey whose house was in front of the house of Sri Kapildeo as he was ordering them about. Sri Saxena continued that these men went away on his arrival and he found Sri Kapildeo inside the house and brought him out.

The evidence does not show that Saraswati Pandey was a worker of Sri Kashi Nath Pandey or that he had confined Sri Kapildeo in his house in order to deter him from carrying on his election work. The confinement of Sri Kapildeo in this manner might have been for other purposes also and there can be no presumption that it must have had something to do with the election.

Sri Bansi Pandey R.W. 5, father of Sri Kapildeo Pandey stated that Saraswati Pandey had never confined him (Kapildeo) in his house or anywhere or at any time during the last General Elections. He did not deny that his son was confined in his house by others. There is no doubt that Sri Kapildeo had been confined in his house at least at the time when Sri Saxena had reached there, owing to his house having been surrounded by several persons with lathis.

I, therefore, decide the issue against the petitioner.

In view of the findings given above the petition, therefore, must be dismissed. The costs of the respondent barring the costs of the commission appear to be Rs. 188/12/-. The respondent cannot get costs of the commission as it was not the fault of the petitioner that a commission had to be issued for the examination of Sri C. B. Gupta. However, if Sri C. B. Gupta would have had to come to Gorakhpur costs would have been incurred in bringing him there. The costs may be taken to be Rs. 100. The respondent's costs thus comes to Rs. 288/12/-. The respondent, therefore, shall get Rs. 600 as costs of the petition from the petitioner.

ORDER

The petition is dismissed. The petitioner shall pay Rs. 600 as costs to the respondent No. 1.

Dated;

The 30th August, 1958.

Sd.) M. S. SAXENA, Member,
Election Tribunal Gorakhpur, at Sitapur.

[No. 82/463/57/1594.]

By order,
DIN DAYAL, Under Secy.

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